

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of ) Case Nos.: **04-O-14278-LMA**  
) (07-O-14039)  
**FRANK EPSTEIN,** )  
) **DECISION AND DISCIPLINE ORDER;**  
**Member No. 97325,** ) **ORDER SEALING CERTAIN**  
) **DOCUMENTS**  
A Member of the State Bar. )

**Introduction**<sup>1</sup>

In this disciplinary proceeding, respondent Frank Epstein (respondent) was accepted for participation in the State Bar Court’s Alternative Discipline Program (ADP). As respondent has successfully completed the ADP, the court hereby orders, as set forth below, the imposition of discipline relating to a successful completion of the ADP.

**Significant Procedural History**

On November 19, 2007, the State Bar of California’s Office of the Chief Trial Counsel (State Bar) filed a Notice of Disciplinary Charges (NDC) against respondent in case nos. 04-O-14278 (07-O-14039).

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<sup>1</sup> Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

Respondent sought to participate in the State Bar Court's ADP. On March 24, 2008, this matter was referred to the ADP. That same day, respondent contacted the State Bar's Lawyer Assistance Program (LAP) to assist him with his mental health issue. Respondent subsequently signed a LAP Participation Plan.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) in June 2008. The Stipulation set forth the factual findings, legal conclusions and mitigating and aggravating circumstances involved in case nos. 04-O-14278 (07-O-14039).

On September 3, 2008, respondent submitted a letter to the court, which established a nexus between respondent's mental health issues and the charges in this matter.

Following briefing by the parties, the court issued a Confidential Statement of Alternative Dispositions and Orders dated March 2, 2009, formally advising the parties of: (1) the discipline which would be ordered if respondent successfully completed the ADP; and (2) the discipline which would be recommended to the Supreme Court if respondent failed to successfully complete or was terminated from the ADP. After agreeing to those alternative dispositions, respondent executed the Contract and Waiver for Participation in the State Bar Court's ADP; the court accepted respondent for participation in the ADP; and respondent's period of participation in the ADP began on March 2, 2009.

On August 15, 2011, the court issued an order finding that respondent successfully completed the ADP and this matter was submitted for decision.

### **Findings of Fact and Conclusions of Law**

The parties' Stipulation, including the court's order approving the Stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth herein. Respondent stipulated, in this disciplinary matter, to violating rule 3-110(A) [failure to perform legal services with

competence]; and section 6068, subdivision (1) [failure to keep agreements made in lieu of disciplinary prosecution].

In aggravation, respondent's misconduct caused significant harm.

In mitigation, respondent had no prior record of discipline. In addition, respondent successfully completed the ADP. Respondent's successful completion of the ADP, which required his successful participation in the LAP, as well as the Certificate of One Year Participation in the Lawyer Assistance Program - Mental Health, qualify as clear and convincing evidence that respondent no longer suffers from the mental health issue which led to his misconduct. Accordingly, it is appropriate to consider respondent's successful completion of the ADP as a mitigating circumstance in this matter. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e)(iv).)

### **Discussion**

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather, to protect the public, preserve public confidence in the legal profession, and maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate alternative discipline recommendations if respondent successfully completed the ADP or was terminated from, or failed to successfully complete, the ADP, the discipline recommended by the parties, as well as certain standards and case law were considered. The standards and case law presented by the parties included standards 1.6 and 2.6, and *In the Matter of Respondent R* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 227; *In the Matter of Bragg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 615; *Conroy v. State Bar* (1990) 51 Cal.3d 799; *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697; and *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813.

Because respondent has now successfully completed the ADP, this court, in turn, now orders the imposition of the lower level of discipline, set forth more fully below, contained in the Confidential Statement of Alternative Dispositions and Orders.

### **Discipline Order**

Accordingly, it is ordered that respondent **Frank Epstein**, State Bar Number 97325, is hereby publicly reprovved. Pursuant to the provisions of rule 5.127(A) of the Rules of Procedure of the State Bar of California (Rules of Procedure), the public reprovval will be effective when this decision becomes final. Furthermore, pursuant to rule 9.19(a) of the California Rules of Court and rule 5.128 of the Rules of Procedure, the court finds that the interests of respondent and the protection of the public will be served by the following specified conditions being attached to the public reprovval imposed in this matter. Failure to comply with any conditions attached to this public reprovval may constitute cause for a separate proceeding for willful breach of rule 1-110 of the Rules of Professional Conduct of the State Bar of California. Respondent is hereby ordered to comply with the following conditions attached to his public reprovval for a period of one year following the effective date of the public reprovval imposed in this matter:

1. During the reprovval period, respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct;
2. Within 10 days of any change, respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California (Office of Probation), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;
3. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request;
4. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of reprovval.

Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all reproof conditions during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the reproof period and no later than the last day of the reproof period;

5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully, any inquiries of the Office of Probation which are directed to respondent personally or in writing relating to whether respondent is complying or has complied with the reproof conditions;
6. Within one year of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session;
7. Respondent must comply with all provisions and conditions of his Participation Plan/Agreement with the Lawyer Assistance Program (LAP) and must provide the Office of Probation with certification of completion of the LAP. Respondent must immediately report any non-compliance with any provision(s) or condition(s) of his Participation Plan/Agreement to the Office of Probation. Respondent must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and his compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. Respondent will be relieved of this condition upon providing to the Office of Probation satisfactory certification of completion of the LAP; and
8. The period during which these conditions are in effect will commence upon the date this decision imposing the public reproof becomes final.

### **Multistate Professional Responsibility Examination**

It is also ordered that respondent take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) and provide proof of passage to the Office of Probation in Los Angeles, within one year after the

effective date of the discipline herein. Failure to pass the MPRE within the specified time may result in suspension. (But see Cal. Rules of Court, rule 9.10(b), and Rules Proc. of State Bar, rule 5.162.)

### **Costs**

The court orders that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

### **Direction Re Decision and Order Sealing Certain Documents**

The court directs a court case administrator to file this Decision and Discipline Order; Order Sealing Certain Documents. Thereafter, pursuant to rule 5.388 of the Rules of Procedure, all other documents not previously filed in this matter are ordered sealed pursuant to rule 5.12 of the Rules of Procedure.

It is further ordered that protected and sealed material will only be disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosure. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

**IT IS SO ORDERED.**

Dated: August \_\_\_\_\_, 2011

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LUCY ARMENDARIZ  
Judge of the State Bar Court